



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Silent Partner, Inc.
File: B-224426.2
Date: November 7, 1986

DIGEST

Where, under invitation for bids set aside for labor surplus area (LSA) concerns, bidder named an LSA and gave the name of an industrial park in completing the solicitation's LSA clause but did not give a specific street address, contracting agency was reasonable in determining from a review of area maps and consultation with city officials in the LSA that the industrial park was located outside the LSA the firm specified. Consequently, the bid was ambiguous as to its commitment to perform in an LSA so that the bidder is ineligible for award.

DECISION

Silent Partner, Inc. (SPI) protests the award of a contract to any other bidder under the labor surplus area (LSA) set-aside portion of invitation for bids (IFB) No. DLA100-86-B-0421, issued by the Defense Logistics Agency (DLA) for bags for carrying protective clothing and equipment. SPI contends that it should receive the award because it is the low responsive, responsible bidder and is offering to perform the requisite portion of the contract in an LSA.

We deny the protest.

DLA received 26 bids in response to the IFB. Before the evaluation of the bids on the LSA set-aside portion was completed, one of the bidders, Reyes Industries, Inc. (Reyes), filed a protest with our Office against any consideration of SPI's bid. Reyes asserted that SPI's response to clause K-17 of the IFB, calling for the bidder to list the address of its manufacturing facility for purposes of being considered for award as an LSA concern, indicated a place of performance that was not included on the Department of Labor's published list of LSAs at the time of bid opening.

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In response to Reyes' protest, DLA requested the Defense Contract Administration Services (DCAS) to investigate the matter. SPI had filled out clause K-17 as follows:

Name of Company: Silent Partner, Inc.
Street Address: Texas Industrial Park
City/County/State: Laredo (Webb County), Texas

Because the name "Texas Industrial Park" did not appear on any map, DCAS contacted the city manager of Laredo, Texas, to ascertain whether the park was, in fact, located within the limits of the city. The city manager indicated that Texas Industrial Park was known "officially" as the Tejas (Spanish for Texas) Industrial Park. The manager further indicated that Tejas Industrial Park has three subdivisions, all of which are located outside the city limits, but in Webb County. Since the Department of Labor's list showed that only the city of Laredo was an LSA but that Webb County itself was not, DLA agreed with Reyes and determined that SPI was not eligible for award on the LSA set-aside portion of the IFB. Reyes then withdrew its protest, and SPI shortly thereafter filed the instant protest.

SPI, which did not actually have a manufacturing facility in Laredo at the time it submitted the bid, contends that it in fact did commit itself in the bid to perform the manufacturing and production of the solicitation items in Laredo, a designated LSA. To support its position, SPI has provided us with a letter from the mayor of Laredo, in which the mayor states that representatives of SPI visited Laredo prior to submitting a bid and that a member of the mayor's staff took them on a tour of an industrial park area located along the "western edge" of Laredo and "within the city limits." The mayor's letter states that "we refer to the parks as the Texas Industrial Park area."

SPI further argues the geographic area of Laredo, Texas, listed on its bid, not a particular street address within that area, should be the determinative factor of the bidder's LSA commitment. The protester notes that the Department of Labor regulations on identifying LSAs reference only civil jurisdictions such as towns, townships, and counties, not street addresses. SPI also points out that after bid opening, the contracting officer advised it to consummate a lease for a facility in Laredo, Texas, and that it then did lease a facility located in the city, in the area it understood was known as Texas Industrial Park.

DLA's position is that it reasonably believed, based on the information given to DCAS, that the listed Texas Industrial Park was located outside the city. DLA maintains that, by listing two locations, one being in an LSA and the other being outside an LSA, the bid was ambiguous, so that SPI did not clearly establish in its bid a commitment to perform as an LSA concern. The agency emphasizes that if SPI had simply listed the street address of a facility, any doubts relating to the intended place of performance easily could have been resolved.

The commitment to perform substantially in an LSA, which establishes a bidder's eligibility for award under an LSA set-aside, is material and thus must be evident from the bid at opening. Air Inc., B-218730, Aug. 14, 1985, 85-2 C.P.D. ¶ 169. A bidder cannot supplement its bid with additional information regarding its status as an LSA concern, because this would be an improper late modification of the bid. Aeromech Industries, B-216450, Dec. 31, 1984, 85-1 C.P.D. ¶ 5.

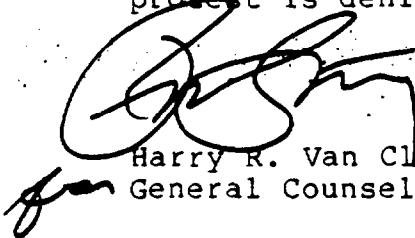
We agree with DLA that SPI's bid did not unequivocally state a commitment to perform in an LSA. Initially, we point out that we see nothing improper in DLA conducting an investigation to determine whether or not Texas Industrial Park was located in Laredo. In general, we have held that an agency may use information in existence at the time of bid opening to establish conformance with what the bidder has specifically listed in its bid. Scanray Corp., B-215275, Sept. 17, 1984, 84-2 C.P.D. ¶ 299.

As to the results of the investigation, the maps of Laredo's industrial parks in existence at the time of bid opening simply do not show a Texas Industrial Park, although they do show a Tejas Industrial Park located just outside the city of Laredo. Since "Tejas" is Texas in Spanish, we believe it was reasonable for DLA to find that the Tejas Industrial Park shown on these maps was quite probably the same as the Texas Industrial Park designated in SPI's bid. Furthermore, in stating that Texas Industrial Park is officially known as Tejas Industrial Park, the Laredo city manager provided support for this determination, and we see no basis to object to DLA's reliance on the city manager's advice. In sum, we think that DLA was reasonable in concluding that SPI's bid was ambiguous as to whether the firm was committing to perform in an LSA. In this respect, while SPI argues that DLA should have contacted the mayor of Laredo or the members

of his staff who took SPI's representatives on a tour of Laredo's industrial parks, there is nothing in the record that indicates that DLA was aware at the time it conducted its investigation that the mayor's staff might have a different view of what Texas Industrial Park meant than did the city manager. In any event, and as stated above, a bidder cannot supplement its bid after opening to establish its status as an LSA concern. Aeromech Industries, B-216450, supra.

Finally, we note that certain other submissions of SPI in connection with this protest appear to support DLA's position that SPI's bid was ambiguous with respect to the commitment to perform in an LSA. In particular, SPI has furnished us with a map of the Laredo industrial parks upon which SPI has lined the area that the firm claims to be the Texas Industrial Park area. Only half of this area, however, is located within the city limits of Laredo. The other half extends outside the city limits into Webb County.

In view of the foregoing, we find that DLA was reasonable in determining SPI ineligible for award as an LSA concern. The protest is denied.



Harry R. Van Cleve
General Counsel